

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Special Permit #1918

DATE: June 13, 2001

PROPOSAL: Kabredlo's, Inc. has applied for a Special Permit to permit the sale of alcoholic beverages for consumption off the premises.

GENERAL INFORMATION:

APPLICANT: Kabredlo's, Inc.
Mike Olderbak
730 West Cornhusker Highway
Lincoln, Nebraska 68521
(402) 475-8838

LOCATION: 338 North 27th Street

REQUESTED ACTION: Review of previous denial of special permit for substantially changed conditions.

LEGAL DESCRIPTION: Lot 14, Block 4, Sunnyside Addition, located in the SW 1/4 of Section 19, T10N, R7E, Lincoln, Lancaster County, Nebraska, generally located at 27th & "R" Streets, **the proposed premises for liquor sales** being further described as beginning at a point 30 ft. from the SE property corner of Lot 14, proceeding west 60.3 ft., north 41.3, east 60.3 ft., and south 41.3 ft. such premises being a convenience store.

EXISTING ZONING: B-3 Commercial.

PURPOSE: To permit the sale of alcoholic beverages for consumption off the premises.

SIZE: 6,510 square feet.

EXISTING LAND USE: Convenience store.

SURROUNDING LAND USE AND ZONING: Immediately adjacent to the north and to the south of the eastern portion of the property are B-3 zoned residences. There is an office building directly south of the western portion of the property, and a used car lot and an empty storefront on the SE corner of 27th and "R" to the north of the property. The remainder of the lots on this block, including the lot immediately east of the proposed establishment, are occupied by dwellings.

The zoning on the site is B3 Commercial, as is the zoning to the south, the west, across 27th Street, and to the north. The zoning to the east is R4 Residential, and to the southeast it is R5 Residential.

COMPREHENSIVE PLAN CONFORMANCE: The Land Use Plan designates this property as Commercial.

HISTORY: On **September 30, 1996**, City Council denied Special Permit 1642, which would have permitted the sale of alcoholic beverages for consumption off the premises.

On **November 13, 1997**, the State Liquor Commission granted Kabredlo's a license to sell beer for off premises consumption at this location.

On **May 18, 2001**, the Nebraska Supreme Court ordered the Liquor Commission to deny the liquor license for failure to comply with local zoning restrictions.

ANALYSIS:

1. SPECIAL PERMIT REQUIREMENTS: Alcoholic beverages may be sold for consumption off the premises in the B-1, **B-3**, H-1, H-2, H-3, H-4, and I-1 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which are waiveable by the City Council:

(a) Parking shall be in accordance with Section 27.67.020 of the Lincoln Municipal Code.

The parking provided exceeds the requirements of 27.67.020, which requires 5 spaces for a 2,505 square foot store. There are 7 spaces proposed at the front of the store, and employee parking will be provided to the rear, although that parking is beyond the required minimum and the dirt surface does not meet Design Standards.

The Public Works and Utilities Department notes that the parking lot does not meet Design Standards. There must be a 15' penetration dimension from the right-of-way to the first parking stalls. Also, delivery vehicles must circulate the lot. It appears that delivery vehicles currently back into the right-of-way of the alley to depart the site or park in the unpaved alley when making deliveries.

(b) The sale of alcoholic beverages for consumption on the premises shall not be permitted without issuance of a permit under Section 27.63.680 of this code.

This application is for off premises consumption.

(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.

The premises are within 11 feet of the R5 District to the southeast, 41 feet from the R4 District to the east, and approximately 8 feet from the residential use to the north (which is located in the B3 District). Mitigation in this instance is impossible due to the two alleys, and the use of the rear 30 feet of the lot for employee parking.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

All lighting will have to comply with the Design Standards for parking lot lighting (Chapter 3.45, Section 3.8).

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

No drive-through window is proposed.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are proposed with this Special Permit.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

There is one door on the business facing west. It does not face a residential district.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

The primary access to the site is from N 27th Street, via the east west alley. The neighborhood to the east and south will likely use the alley system to access this business, because "P" and "Q" Streets are closed off at 27th, forcing traffic down to "O" or up to "R". There is no median cut in 27th at "Q". The north-south and the east-west alleys are gravel, and high usage and wet weather will create a mess only correctable by surfacing, which, if accomplished through a special assessment district, will impose the cost burden on all of the abutting residences. The use of the alley itself by the customers coming and going has the potential to be very disruptive to this neighborhood.

(i) All other regulatory requirements for liquor sale shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

- (1) Revocation or cancellation of the liquor license for the specially permitted premises; or**
- (2) Repeated violations related to the operation of the permittee's business.**

Planning Commission review and City Council approval is required for this use.

2. TRAFFIC ANALYSIS: The Public Works and Utilities Department notes that the parking lot does not meet Design Standards.

3. POLICE RESPONSE: The Lincoln Police Department has concerns with the amount of available parking, the possibility of patrons blocking the alley, and beer distributor trucks blocking the alley when they deliver alcohol. LPD opposes this special permit.

4. URBAN DEVELOPMENT DEPARTMENT: The Urban Development Department states,

The Urban Development Department has worked with North 27th Street business owners and neighborhood associations for the last several years. The result of this work was the completion, and now implementation, of the North 27th Street Redevelopment Plan... One of the guiding principles calls for the strengthening of existing residential investments. In our view, granting a liquor license within 100 feet of a residential area is in direct conflict with this principle... In addition, this waiver would be in direct conflict with another of the guiding redevelopment principles in the plan: "Establish defensible edges between residential and non-residential uses. Use streets or green ways to provide boundaries thus realizing the benefits of mixed use while screening the negative effects of commercial growth on residential environments."

The Urban Development Department recommends that this special permit be denied.

CONCLUSION:

- 1. This proposal **does not conform to the requirements of subsection "c"** of Section 27.63.685, which requires a 100 foot separation from residential districts or uses. This Liquor Special Permit application is bounded by alleys and residential uses or districts on three sides. The applicant has not proposed any mitigation and due to the small lot size it is not likely that the site could be successfully fenced.
- 2. The traffic impacts are substantial. The heavy use of the alleys to access the site is problematic for the abutting residences, and for the upkeep of the alley system itself, which is not paved. Any surfacing improvement would be at the expense of the abutting residents and Kabredlo's. This situation **does not conform to subsection "h"** of Section 27.63.685, which seeks to avoid access by residential streets.

3. None of the elements which contributed to a recommendation of denial five years ago have changed. The store continues to be surrounded by residential uses. No mitigation is proposed. Kabredlo's has been selling beer at this location for three and a half years in violation of the Lincoln Zoning Ordinance. The fact that beer sales were conducted on the site during the court appeals process should not be considered in support of this application.

STAFF RECOMMENDATION:

DENIAL

If, following public hearing, it is determined that this application should be approved, the following conditions are suggested:

CONDITIONS:

1. This approval permits the sale of alcohol for consumption off the premises at the establishment located at 338 North 27th Street.
2. Before commencing sales of alcoholic beverages, the applicant shall submit 5 copies of a revised site plan showing a parking lot which meets parking lot and screening design standards and provides circulation for delivery trucks.
3. The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
4. This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
5. Construction plans shall comply with the approved plans.
6. The City Clerk shall file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.

Prepared by:

Jason Reynolds
Planner

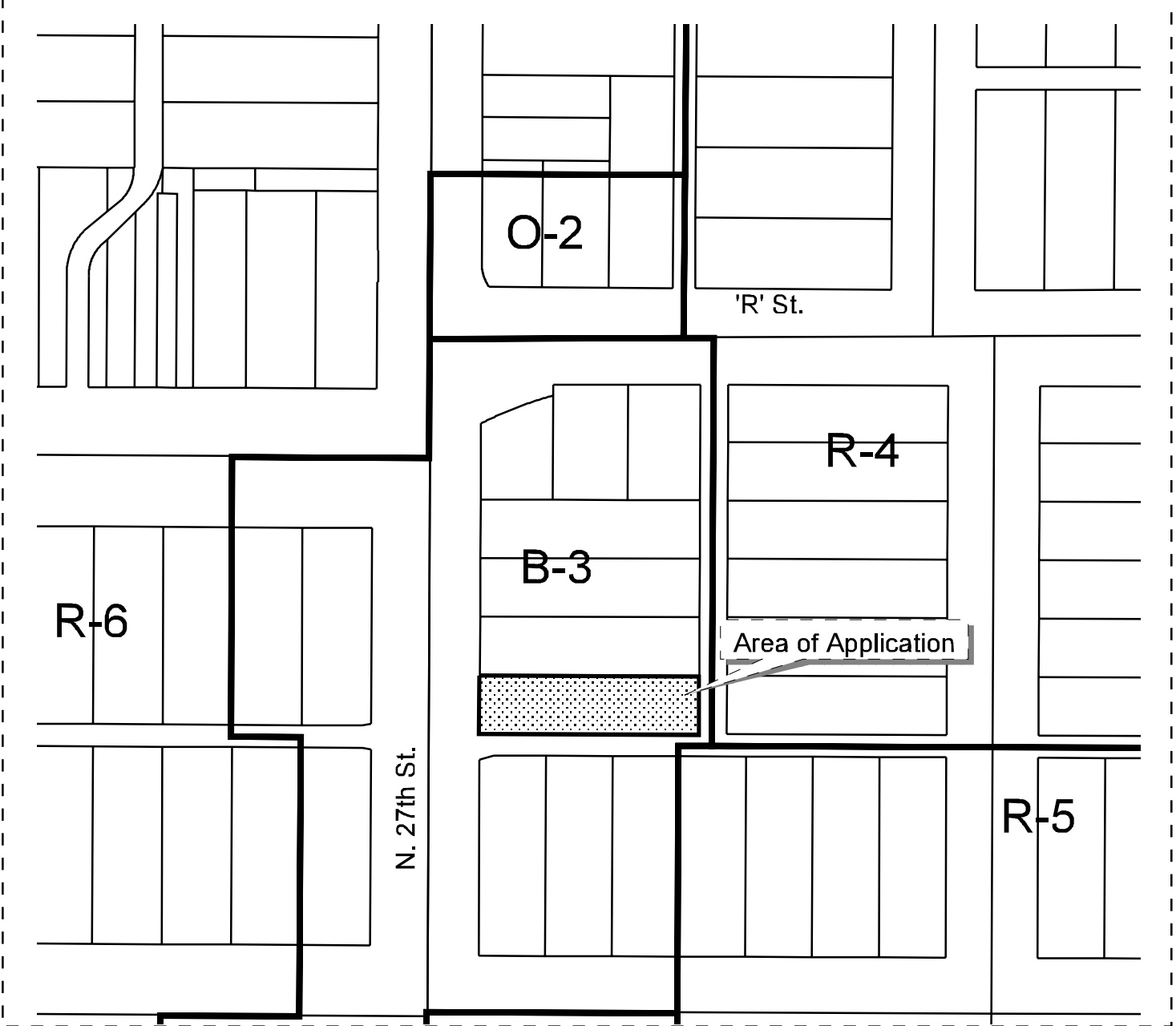
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Special Permit #1918
338 N. 27th St.



Photograph Date: 1997

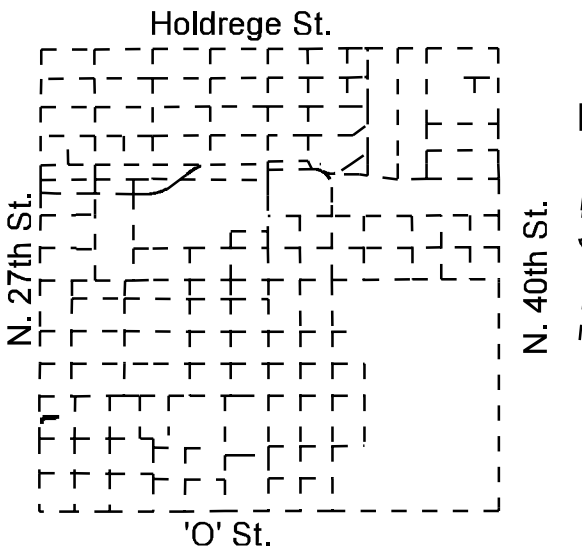
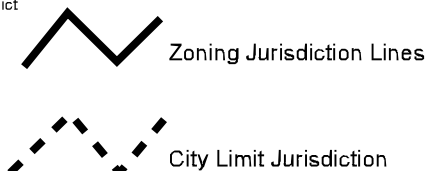


Special Permit #1918 **338 N. 27th St.**

Zoning:

- | | |
|------------|--|
| R-1 to R-8 | Residential District |
| AG | Agricultural District |
| AGR | Agricultural Residential District |
| R-C | Residential Conservation District |
| O-1 | Office District |
| O-2 | Suburban Office District |
| O-3 | Office Park District |
| R-T | Residential Transition District |
| B-1 | Local Business District |
| B-2 | Planned Neighborhood Business District |
| B-3 | Commercial District |
| B-4 | Lincoln Center Business District |
| B-5 | Planned Regional Business District |
| H-1 | Interstate Commercial District |
| H-2 | Highway Business District |
| H-3 | Highway Commercial District |
| H-4 | General Commercial District |
| I-1 | Industrial District |
| I-2 | Industrial Park District |
| I-3 | Employment Center District |
| P | Public Use District |

One Square Mile
 Sec. 19 T10N R7E



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Telephone (402) 476-7621

May 31, 2001

VIA FACSIMILE 441 6377

Becky Horner
Planning Department
555 S. 10th Street
Lincoln, NE 68508

Re: Kabredlo's Special Permit

Dear Becky:

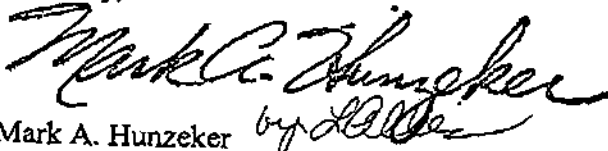
This is to certify that the property within the special permit application filed for Kabredlo's, Inc., is owned by Mike and Mark Olderbak (Lot 14, Block 4, Sunnyside Addition, Lincoln, Lancaster County, Nebraska).

We request a waiver of the requirement of Section 27.63.680 that the licensed premises be located no closer than 100 feet from a residential district or residential use.

As you know, this property has operated with a liquor license for the past 4 and-a-half years. It has operated without adverse impact on any adjoining properties or the surrounding neighborhood. It has served primarily a walk-in clientele comprised of residents of the surrounding neighborhood.

Please let me know if you require any further information.

Sincerely,


Mark A. Hunzeker
For the Firm

MAH:la

Lincoln



Nebraska's Capital City

June 13, 2001

Jason Reynolds
Lincoln Lancaster County Planning Department
555 S. 10th, STE 213
Lincoln, NE 68508

Dear Jason:

I am writing on behalf of the City of Lincoln's Urban Development Department to oppose Special Permit No. 1918, requested by Kabredlo's, Inc. Kabredlo's is requesting a waiver from Section 27.63.680 to allow a liquor license in their business which is closer than 100 feet from a residential district or residential use.

The Urban Development Department has worked with North 27th Street business owners and neighborhood associations for the last several years. The result of this work was the completion, and now implementation, of the *North 27th Street Redevelopment Plan*. The plan contains guiding development principles for the North 27th Street corridor. One of the guiding principles calls for the strengthening of existing residential investments. In our view, granting a liquor license within 100 feet of a residential area is in direct conflict with this principle. Instead of strengthening the residential area, we believe it would be a detriment to the adjacent residential neighborhood. In addition, this waiver would be in direct conflict with another of the guiding redevelopment principles in the plan: "Establish defensible edges between residential and non-residential uses. Use streets or green ways to provide boundaries thus realizing the benefits of mixed use while screening the negative effects of commercial growth on residential environments."

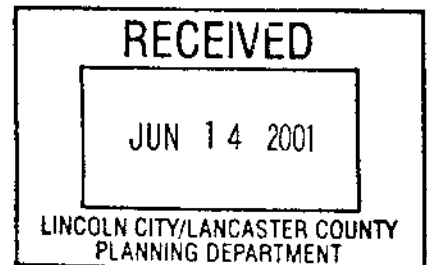
The North 27th Street Business and Civic Organization is working hard to revitalize North 27th Street and it is our view that granting a liquor license within 100 feet of a residential area will be a detriment to the area and in conflict with the work of the North 27th Street Business and Civic Organization and the city. Therefore, it is our recommendation that this request be denied.

Thank you for the opportunity to comment on this request. Please call me at 441-8211 if you have any questions.

Sincerely,

Wynn S. Hjermstad, AICP
Community Development Manager

cc: Marc Wullschleger, Director, Urban Development
Tony Bonelli, President, North 27th Street Business and Civic Organization



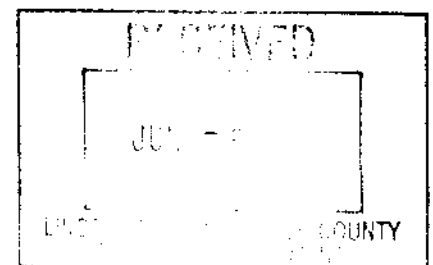
Memorandum

To: Becky Horner, Planning Department
From: Charles W. Baker, Public Works and Utilities *CB*
Subject: Kabredlo's Alcohol Permit #1918
Date: June 4, 2001
cc: Roger Figard, Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the site plan for the requested Alcohol Sales Permit for the Kabredlos site located north of N 27th and 'Q' Streets. Public Works has the following comments:

The parking lot does not meet Design Standards. The required 15' penetration dimension from the right-of-way to the first parking stalls is not being met.

Delivery vehicles must circulate on the lot. It appears that delivery vehicles must back into the right-of-way of the alley to depart the site.



MICHAEL WOOLMAN

From: MICHAEL WOOLMAN <lpd737@cjc.ci.lincoln.ne.us>
To: Jason Reymolds <JReynolds@ci.lincoln.ne.us>
Sent: Wednesday, June 13, 2001 2:57 PM
Subject: Fw:

----- Original Message -----

From: MICHAEL WOOLMAN
To: RHill@ci.lincoln.ne.us
Sent: Friday, June 08, 2001 2:46 PM

Ray,

I talked to City Attorney Joel Pederson and Lincoln Police Legal Advisor Richard Anderson reference the Kabredlos alcohol permit #1918. Joel Pederson has worked on alcohol permits with Kabredlos at the current location and is currently awaiting a court decision that would keep Kabredlos from acquiring a liquor license (Please direct any inquires and questions to Joel Pederson). A special permit was previously denied at the current location on 9-30-96.

The Lincoln Police Department has concerns with the amount of available parking in the lot of Kabredlos. We also have concerns with patrons parking and blocking the alley and beer distributor trucks parking in the alley when they deliver alcohol.

Based on legal advise the Lincoln Police Department would oppose the alcohol permit #1918 for Kabredlos.

Michael S. Woolman
Planning Sergeant
Lincoln Police Department